

REMARKS

Claims 1-6 and 8-10 are pending in the present application. Claims 7 and 11-24 were previously deleted. Applicant is amending herewith Claim 1. Support for these amendments can be found generally throughout the specification. Applicant submit that all claims are now in condition for allowance.

The Office Action:

Claims 1-10 were rejected under 35 U.S.C. §102(b) as being completely anticipated and unpatentable over the patent to Clarke (U.S. Patent No. 1,103,484). Applicant respectfully traverses the foregoing rejection.

The Rejection Under 35 U.S.C. §102:

Claims 1-10 were rejected under 35 U.S.C. §102(b) as being completely anticipated and unpatentable over the patent to Clarke. The rejection states that Clarke discloses a tool having all of applicant's claimed structure including an elongate body, a handle portion, an applicator portion including prongs, with the tool further including a fluid inlet and a valve. Applicant respectfully traverses this rejection.

The patent to Clarke relates to a hand concrete mixer. The tool is designed to provide an "implement which may be used for the purpose of stirring and mixing the material as a hoe or a rake is now ordinarily used, and which will at the same time supply the mixture the water necessary to render it of the desired consistency." However, the device disclosed in Clarke does not have an applicator portion sized and shaped for insertion under soil and forming an elongate opening in said soil by lateral movement of said handle portion as presently required by

Claim 1. Furthermore, the elements identified as “6 and 7” in Clarke do not have a wedge-shaped tip portion for cutting sod and penetrating soil. Thus, the implement disclosed in Clarke could not be used for “forming a relatively shallow and narrow furrow or hole or slit in soil; *i.e.*, approximately 6 to 12 inches below the soil’s surface” as the present invention is intended to be used. Accordingly, the implement disclosed in Clarke is not suitable for use as a digging tool.

In order for Clarke to anticipate the presently claimed invention, Clarke must disclose each and every element of, for example Claim 1. As stated above, Clarke does not disclose at least the following two elements of Claim 1: (1) a device having an applicator portion sized and shaped for insertion under soil and forming an elongate opening in said soil by lateral movement of said handle portion, and (2) wedge-shaped tip portion for cutting sod and penetrating soil. Furthermore, applicant is amending Claim 1 herewith to specify that the present invention is a digging tool and Clarke does not disclose a digging tool. Since Clarke does not disclose all of the elements of Claim 1, Clarke cannot anticipate Claim 1. Therefore, rejection of Claims 1-10 under 35 U.S.C. §102(b) is improper and should be withdrawn. Such action is respectfully requested.

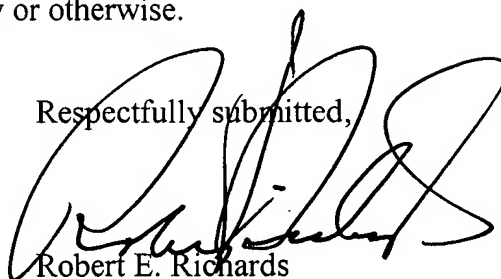
Conclusion:

Applicant respectfully requests reconsideration of the present application in view of the foregoing remarks. Applicant submits that all claims are in condition for allowance. Such action is courteously solicited. Applicant further requests that the

Response
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Examiner call the undersigned counsel if allowance of the claims can be facilitated by examiner's amendment, telephone interview or otherwise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert E. Richards', is written over the text 'Respectfully submitted,'.

Robert E. Richards

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